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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 451

In the Matter of:

J. K. ABERNATHY, SS No. 244-42-7854,
Employee, et al, *Appellants*

and

EASTERN AIR LINES, INCORPORATED, Employer,

and

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA
Raleigh, North Carolina, *Appellee*

APPELLANTS HEREIN:

One Hundred and Twenty-Three Individual Members
of the Charlotte Council, Air Line Pilots Association,
Eastern Air Lines, Inc.

On Appeal from the Supreme Court of North Carolina

APPENDIX TO THE STATEMENT AS TO JURISDICTION

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EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

July 18, 1962
Decision of R. B. Overton,
Special Appeals Deputy

Decision No. 541-L

In the Matter of:

J. K. ABERNATHY
SS No. 244-42-7854

Employee, et al, and
Eastern Air Lines, Incorporated,
Employer.

ISSUE: Labor Dispute — Section 96-14(4) of the Employment Security Law of North Carolina.

Statement of Case:

This matter coming on to be heard and being heard before the undersigned Special Appeals Deputy on July 12, 1962, in the Superior Court Room, Mecklenburg County Courthouse, Charlotte, North Carolina, after due notice to all parties. The purpose of the hearing was to determine if the unemployment of the employees of Eastern Air Lines, Incorporated, beginning June 23, 1962, was due to a labor dispute in active progress at the factory, establishment, or other premises at which they are or were last employed, and further to determine if such individuals are disqualified for unemployment insurance bene-

fits by reason thereof. Appearances were Mr. Warren C. Stack and Mr. James L. Cole of the law offices of Mr. Warren C. Stack, Attorney, 900 Wachovia Bank Building, Charlotte, North Carolina, representing the Airline Pilots Association, and Mr. Ernest W. Machen and Mr. J. W. Alexander, Jr., of the law firm of Blakeney, Alexander & Machen, North Carolina National Bank Building, Charlotte, North Carolina, representing all employees except pilots and flight engineers, and Mr. Harold N. Hill, Jr., of the law firm of Gambrell, Harlan, Russell, Moye & Richardson, Suite 825, C & S Bank Building, Atlanta, Georgia, representing Eastern Air Lines, Inc. Also present was Mr. Malcolm F. Plaeger of Eastern Air Lines, Incorporated, and Mr. M. I. Perkins, Charlotte Station Manager, Eastern Air Lines, Incorporated, and a group of approximately three hundred employees.

Findings of Facts

1. Eastern Air Lines, Incorporated, hereinafter referred to as the employer, is a corporation engaged in the business of operating an air transport system, whereby passengers and cargo are transported in interstate commerce by means of airplanes, serving twenty-six states in the eastern half of the United States and one hundred and twenty cities, and in addition thereto serving Mexico City, Puerto Rico, Bermuda, and Canada.

2. The employer employs seventeen thousand nine hundred and six employees throughout its system with between six hundred and fifty and seven hundred being based in North Carolina working at or out of the airports and/or cities served in this State.

3. The classifications of the employees utilized by the employer consist of various skills and vocations, among which are mechanics and related skills, pilots, stewards and stewardesses, flight engineers, communication workers, dispatchers, and various clerical workers, and others, including some non-union personnel.

4. The employees are represented by the following unions or associations according to their skills and vocations: (1) International Association of Machinists; (2) Airline Pilots Association; (3) Airline Stewards and Stewardesses Association; (4) Flight Engineers International Association; (5) Communication Workers of America Union; and (6) Airline Dispatchers Association. Such unions or associations have been duly certified under the Federal Statutes as the bargaining agent for their members and all other personnel performing similar or related duties.

5. That in its system the employer employs five hundred and seventy-five flight engineers whose services are utilized on four-engine aircraft. Some such four-engine aircraft land and take off with passengers and cargo at all airports in the system located in North Carolina; namely, Charlotte, Raleigh-Durham, and Greensboro-High Point, taking on passengers and cargo at each airport as the necessity arises. That none of the flight engineers are based in North Carolina, although they fly in and out of the various North Carolina airports on schedules of all four-motored airplanes serving North Carolina.

6. That on June 23, 1962, the five hundred and seventy-five flight engineers went on strike and refused to carry out their work assignments. This strike

and refusal to work was in protest of the failure of the employer and the bargaining agent representing flight engineers to reach an agreement as to the qualifications of the flight engineers, there being a difference of opinion between such parties as to whether the flight engineers should also be qualified as pilots.

7. That in consequence of the strike of the flight engineers the employer cancelled all flights and furloughed several thousand employees, including its employees in North Carolina, a list of which is hereto attached marked "Exhibit A." That those individuals whose names appear on "Exhibit A" hereto attached have been unemployed since June 23, 1962, and their unemployment is due to the dispute or controversy in existence between the flight engineers and the employer. That the controversy between the flight engineers and the employer was still in existence as of the date of the hearing before the undersigned Special Appeals Deputy.

8. That prior to June 23, 1962, the President of the United States appointed an Emergency Presidential Board for the special purpose of hearing the differences between the flight engineers and the employer with instructions to recommend a settlement of such differences. That such Emergency Presidential Board made its recommendation and the bargaining agent representing the flight engineers refused to accept all recommendations as submitted, particularly refusing to accept the recommendation that the qualifications of the flight engineers be arbitrated. That settlement of such controversy was still pending at the time of the hearing before the undersigned Special Appeals Deputy, and that all those individuals whose names

appear on "Exhibit A" were still unemployed as of the date of the hearing before the undersigned Special Appeals Deputy.

9. That in addition to those individuals whose names appear on "Exhibit A," five individuals, namely: Marian J. Hehs, S. S. No. 294-32-8207, Edwin D. Meador, S. S. No. 223-16-0879; Henry Scott McConnell, S. S. No. 223-20-4378; Linda Lee Emory, S. S. No. 244-66-8294, and Frances Gail Hartness, S. S. No. 240-66-5700, have filed claims against the Employment Security Commission of North Carolina on interstate claims, such individuals having been transferred from employment in North Carolina to other points on the system of the employer and having been laid off for the same reason as those individuals whose names appear on "Exhibit A."

Reasons and Conclusions of Law:

Under the provisions of the Employment Security Law of North Carolina, namely: Section 96-14(4), it is provided as follows:

"An individual shall be disqualified for benefits:

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials

or services necessary to the continued and usual operation of the premises at which he is or was last employed . . . ."

The 1961 Legislature re-wrote the above section of the Employment Security Law to read as above set forth. Prior to July 1, 1961, this specific section of the law read as follows:

"An individual shall be disqualified for benefits:

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that —

"a. He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

"b. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: . . . ."

During the month of March 1961, this deputy was called upon to pass on the eligibility of the employees of this employer, Eastern Air Lines, Incorporated, for unemployment insurance benefits during a strike called by the identical union that called the strike in this case, such strike having been called for the same

reason — a dispute over the qualifications of the flight engineers.

In deciding that case, the same being Decision No. 518-L, it was ruled that all individuals who were unemployed in consequence of a stoppage of work attributable to a labor dispute at the plant or premises of Eastern Air Lines, Incorporated, were eligible with the exception of the flight engineers, pilots, and flight attendants, it being concluded that the pilots flight engineers, and flight attendants were in a different class from other employees, and, therefore, the other employees came within the exceptions as set forth in the statute in effect at that time. It will be noted that under the law in effect prior to July 1, 1961, it was provided that the disqualifications prescribed by the statute should not apply if it was shown to the satisfaction of the Commission that such individuals were not participating in, financing, or directly interested in the labor dispute, and that they did not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurred, any of whom were participating in, or financing, or directly interested in the dispute.

In amending and re-writing the disqualifying section applicable to labor disputes, the 1961 Legislature did not retain any of the provisions of the prior law providing exceptions thereto. Therefore, the statute as now written is interpreted to mean that all individuals who become unemployed by reason of a labor dispute in active progress at the factory, establishment, or other premises at which they are or were last employed must be disqualified from receiving unem-

ployment insurance benefits, irrespective of the grade or class of such individuals or their interest in the dispute or their participation in the dispute.

The question then presents itself as to whether a labor dispute was in active progress at the factory, establishment, or premises of Eastern Air Lines, Incorporated. From the findings of fact above set forth it is concluded that a labor dispute was in active progress between Eastern Air Lines, Incorporated, and the flight engineers on June 23, 1962, at the time of the strike or walkout of the flight engineers, and that such labor dispute was still in active progress as of July 12, 1962. It is further concluded that the phrase "at the factory, establishment, or other premises," as used in the statute and as applicable to this case, encompasses the entire system of Eastern Air Lines, Incorporated. It, therefore, follows that any of the individuals employed in the system of Eastern Air Lines, Incorporated, who are unemployed must be disqualified from receiving benefits under the Employment Security Law of North Carolina as long as such labor dispute continues in active progress.

Decision:

It is, therefore, ORDERED, ADJUDGED AND DECREED that Marian J. Hehs, S. S. No. 294-32-8207; Edwin D. Meador, S. S. No. 223-16-0879; Henry Scott McConnell, S. S. No. 223-20-4378; Linda Lee Emory, S. S. No. 244-66-8294; and Frances Gail Hartness, S. S. No. 240-66-5700; and all those individuals whose names appear on "Exhibit A" shall be and the same are disqualified from receiving unemployment insurance benefits beginning June 23, 1962, through July

12, 1962, and continuing as long as the labor dispute between Eastern Air Lines, Incorporated, and the flight engineers remains in active progress and their unemployment is caused thereby.

R. B. OVERTON

Special Appeals Deputy.

Decision Mailed: July 18, 1962

Appeal Rights Expire: July 30, 1962.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

August 10, 1962

Decision of the Full Commission

Decision No. 3301

In the Matter of:

J. K. ABERNATHY
SS No. 244-42-7854

Employee, et al

Eastern Air Lines, Incorporated
Employer

Section 9614 (4) — Labor Dispute: "An individual shall be disqualified for benefits: (4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be

disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit."

Origin of Appeal:

This cause came on to be heard by and before the Full Commission at its office in Raleigh, North Carolina, on Friday, August 10, 1962, after due notice of hearing to the interested parties. The purpose of the hearing was to pass upon the appeals filed on behalf of the employees of Eastern Air Lines, Incorporated, to a decision of the Special Appeals Deputy, No. 541-L, and for the purpose of a Commission review of the decisions of the Special Appeals Deputy numbers 543-L, 544-L and 546-L, involving other employees of Eastern Air Lines, Incorporated, and for the purpose of passing upon a claim filed in Chicago, Illinois, by one Frances G. Arrowood, SS No. 243-60-1009, said claim having been removed to the Full Commission as a result of an order of the Chairman dated August 8, 1962. R. F. Martin, Director Unemployment Insurance Division, made a formal request to remove such claim so that it might be reviewed along with the other matters on appeal before the Commission. The hearing was also held for the purpose of determining whether all of such claimant-employees of Eastern Air Lines, Incorporated, should be disqualified under the provisions of Section 96-14 (4) of the Employment Security Law. Appearances before the Commission were Mr. Ernest W. Machen of the law firm of Blakeney, Alexander & Machen, Charlotte, North Carolina, representing all employees

except pilots and flight engineers, and Mr. James L. Cole of the law office of Mr. Warren C. Stack, Charlotte, North Carolina, representing the Airline Pilots Association. Also present were Mr. Malcolm F. Plaeger, Area Manager for Eastern Air Lines, Incorporated, Charlotte, North Carolina, J. T. Brosnan, Station Manager, Eastern Air Lines, Incorporated, Raleigh-Durham Airport, J. W. Goodwin, Sales Manager, Eastern Air Lines, Incorporated, Raleigh, North Carolina, and H. N. Schofield, Operations Supervisor, Eastern Air Lines, Incorporated, Raleigh-Durham Airport. In addition, there was also present a small group of employees of Eastern Air Lines, Incorporated. The case was presented to the Commission by W. D. Holoman, Chief Counsel.

Findings of Fact:

1. Eastern Air Lines, Incorporated, hereinafter referred to as the employer, is a corporation engaged in the business of commercial air transportation, transporting passengers, U. S. mail, and cargo in interstate commerce by means of airplanes, serving twenty-six States in the eastern half of the United States and one hundred and twenty cities, and in addition thereto, serving Mexico City, Puerto Rico, Bermuda and Canada.

2. The employer normally employs seventeen thousand nine hundred and six employees throughout its system with between six hundred and fifty and seven hundred being based in North Carolina working at or out of the airports and/or cities served in this State.

3. The classification of the employees utilized by the employer consists of various skills and vocations.

among which are mechanics and related skills, pilots, stewards, stewardesses, flight engineers, communication workers, dispatchers, and various clerical workers, and others, including some nonunion personnel.

4. The employees of Eastern Air Lines, Incorporated, are represented through its system by the following unions or associations according to their skills and vocations: (1) International Association of Machinists; (2) Airline Pilots Association; (3) Airline Stewards and Stewardésses Association; (4) Flight Engineers International Association; (5) Communication Workers of America Union, and (6) Airline Dispatchers Association. Such unions or associations have been duly certified under the Federal Statutes as the bargaining agents for their members and all other personnel performing similar or related duties, and such bargaining is on a system-wide basis.

5. In its system the employer employs five hundred and seventy-five flight engineers whose services are utilized on four-engine aircraft throughout its system. Some of such four-engine aircraft land and take off with passengers and cargo at all airports in the system located in North Carolina; namely, Charlotte, Raleigh-Durham and Greensboro-High Point, taking on passengers and cargo at each airport as the necessity arises. Jet planes belonging to the employer also land and take off from the airport in Charlotte taking passengers and cargo to and from that airport as the necessity arises. Flight engineers are employed and used on all four-engine and jet aircraft landing and taking off in North Carolina. None of the flight engineers are based in North Carolina although they fly in and out of the various airports on schedules of four-motored piston driven planes and all jet planes

serving North Carolina. The flight engineers perform services at each of the company's facilities in North Carolina and elsewhere throughout its entire system. When the four-engine piston driven planes and jet planes land at the North Carolina airports, the flight engineers inspect the planes for safety airworthiness and determine the distribution of gasoline.

6. Approximately thirty-five percent of the planes used by the employer in its system are two-engine piston aircraft and on all two-engine aircraft the services of flight engineers are not used. Approximately sixty-five percent of the planes used by the employer in its system consist of four-engine piston planes and jets, all of which utilize the services of flight engineers.

7. On June 23, 1962, the five hundred and seventy-five flight engineers went on strike and refused to carry out their work assignments. This strike and refusal to work was in protest of the failure of the employer and the bargaining agent representing the flight engineers to reach an agreement as to the qualifications of the flight engineers, there being a difference of opinion between such parties as to whether the flight engineers should also be qualified as pilots. Beginning on June 23, 1962, and continuing through the date of the hearing by the Special Appeals Deputy on July 12, 1962, the flight engineers failed and refused to perform their services in bringing planes in and out of the facilities of the employer in North Carolina, and elsewhere.

8. In consequence of the strike of the flight engineers, the employer cancelled all flights and furloughed several thousand employees, including its

employees in North Carolina, a list of which is hereto attached and marked "Exhibit A." Those individuals whose names appear on "Exhibit A" hereto attached were unemployed beginning June 24, 1962, through July 12, 1962, the date of the hearing before the Special Appeals Deputy, and their unemployment is due to the dispute or controversy in existence between the flight engineers and the employer; that the controversy between the flight engineers and the employer was still in existence as of the date of the hearing before the Special Appeals Deputy on July 12, 1962.

9. Prior to June 23, 1962, the President of the United States appointed an Emergency Presidential Board for the special purpose of hearing the differences between the flight engineers and the employer with instructions to recommend a settlement of such differences. Such Emergency Presidential Board made its recommendations and the bargaining agent representing the flight engineers refused to accept all recommendations as submitted, particularly refusing to accept the recommendation that the qualifications of the flight engineers be arbitrated. The settlement of such controversy was still pending at the time of the hearing before the Special Appeals Deputy, and all those individuals whose names appear on "Exhibit A" were still unemployed as of the date of the hearing before the Special Appeals Deputy.

10. In addition to those individuals whose names appear on "Exhibit A," six individuals; namely, Marian J. Hehs, SS No. 294-32-8207; Edwin D. Meador, SS No. 223-16-0879; Henry Scott McCornell, SS No. 223-20-4378; Linda Lee Emory, SS No. 244-66-8294; Frances Gail Hartness, SS No. 240-66-5700,

and Frances G. Arrowood, SS No. 243-60-1009, have filed claims against the Employment Security Commission of North Carolina on interstate claims, such individuals having been transferred from employment in North Carolina to other points on the system of the employer, and having been laid off for the same reasons as those individuals whose names appear on "Exhibit A."

11. In addition to those individuals whose names appear on "Exhibit A" and in addition to those individuals shown in the preceding finding of fact, two individuals, namely, Clyde Reece, SS No. 244-26-137, and Nancy Hunsinger, SS No. 241-60-3275, filed out-of-State claims against the Employment Security Commission of North Carolina, effective June 24, 1962, such individuals having been transferred from employment in North Carolina to other points on the system of the employer, and having been furloughed for the same reasons as those individuals whose names appear on "Exhibit A." R. B. Overton, Special Appeals Deputy, rendered Decision No. 543-L as to Clyde Reece, and Decision No. 544-L as to Nancy Hunsinger, disqualifying Clyde Reece beginning June 24, 1962, and Nancy Hunsinger beginning June 24, 1962, from receiving unemployment insurance benefits and continuing as long as the labor dispute between Eastern Air Lines, Incorporated, and the flight engineers was in active progress. William M. Pestole, Jr., SS No. 263-38-0643, filed an out-of-State claim against the Employment Security Commission of North Carolina, effective July 15, 1962, through the Florida State Employment Service office at St. Petersburg, Florida. On January 28, 1962, the said William M. Pestole, Jr. was called into the National Guard.

He completed this service on June 14, 1962, and was to return to work for Eastern Air Lines, Incorporated, on June 30, 1962, but could not do so by reason of the strike of the flight engineers then in active progress. R. B. Overton, Special Appeals Deputy, rendered Decision No. 546-L as to William M. Pestole, Jr. disqualifying him from receiving benefits beginning July 15, 1962, the effective date of his claim, and continuing as long as the labor dispute between Eastern Air Lines, Incorporated, and the flight engineers was in active progress. R. F. Martin, Director Unemployment Insurance Division, requested a review of the three decisions mentioned in this finding of fact, and by order dated July 30, 1962, Henry E. Kendall, Chairman, removed these cases to the Full Commission for review along with all other matters involved in this controversy. Clyde Reece and Nancy Hunsinger were last employed by Eastern Air Lines, Incorporated, and were furloughed along with all other employees covered by this decision by reason of a strike of the flight engineers. Such furloughs were for the duration of the strike, and at the time of the hearings before R. B. Overton as to these two individuals, the labor dispute was still in active progress. William M. Pistole, Jr. was on military leave until June 14, 1962, and was to return to work for Eastern Air Lines, Incorporated, on June 30, 1962, but could not do so by reason of the strike of the flight engineers.

12. Pat F. Williams, SS No. 247-60-8141, who is included on "Exhibit A" hereto attached, and who was included in Decision No. 541-L by R. B. Overton, filed an initial interstate claim through the Florida State Employment Service office at Tallahassee,

Florida, claiming benefits against the State of North Carolina, and showing no intervening employment. Dianne E. Hunter, SS No. 244-66-2280, who is included on "Exhibit A" hereto attached, and who is included in Decision No. 541-L by R. B. Overton, filed an initial interstate claim through the South Carolina State Employment Service office at Conway, South Carolina, claiming benefits from North Carolina, without showing any intervening employment.

13. Mary Ann Batchelor, SS No. 468-42-0800, who is included on "Exhibit A" hereto attached, and who was included in Decision No. 541-L by R. B. Overton, filed an initial interstate claim through the South Carolina State Employment Service office, Columbia, South Carolina, on July 16, 1962, claiming benefits from North Carolina. The file in respect to this individual reveals that she accepted a temporary job through Manpower, Incorporated, Columbia, South Carolina, with Virginia Steel Company of Columbia, South Carolina, and worked for such company during the period of July 2 through July 13, 1962. She was a temporary employee of Virginia Steel Company and the claimant stated that she was still associated with Eastern Air Lines, Incorporated, and would return to work for Eastern Air Lines, Incorporated, when the dispute is settled.

14. Cleon B. Miller, SS No. 246-22-6559, who is included on "Exhibit A" hereto attached, and who was included in Decision No. 541-L rendered by R. B. Overton, obtained temporary employment with McGuire Oil Company, Guilford College, North Carolina, on July 18, 1962, and was working on that temporary job on or about August 1, 1962. He was still attached to Eastern Air Lines, Incorporated, and expects to

return to work with the employer when the labor dispute is settled.

Issue:

What are the claimant-employees' rights to benefits under the Employment Security Law?

Reasons and Conclusions of Law:

Under the provisions of the Employment Security Law of North Carolina, namely, Section 96-14 (4), it is provided as follows:

"An individual shall be disqualified for benefits:

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. . . ."

The 1961 Legislature re-wrote Section 96-14 (4) of the Employment Security Law to read as above set forth. Prior to July 1, 1961, this specific section of the law read as follows:

"An individual shall be disqualified for benefits:

"(4) For any week with respect to which the Com-

mission finds that his total or partial unemployment is due to a stoppage of work that exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission —

"a. He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

"b. He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: . . . ."

During the month of March 1961, a Special Appeals Deputy was called upon to pass on the eligibility of the employees of this employer, Eastern Air Lines, Incorporated, for unemployment insurance benefits during a strike called by the identical union that called the strike in this case, such strike having been called for the same reason — a dispute over the qualifications of the flight engineers.

In deciding that case, the same being Decision No. 518-L, it was ruled that all individuals who were unemployed in consequence of a stoppage of work attributable to a labor dispute at the plant or premises of Eastern Air Lines, Incorporated, were eligible with the exception of the flight engineers, pilots, and flight attendants, it being concluded that the pilots, flight engineers, and flight attendants were in a different

class from other employees and, therefore, the other employees came within the exceptions set forth in the statute in effect at that time. It will be noted that under the law in effect prior to July 1, 1961, it was provided that the disqualification prescribed by the statute should not apply if it was shown to the satisfaction of the Commission that such individuals were not participating in, financing, or directly interested in the labor dispute, and that they did not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurred, any of whom were participating in, or financing, or directly interested in the dispute.

In amending and re-writing the disqualifying section applicable to labor disputes, the 1961 Legislature did not retain any of the provisions of the prior law providing exceptions thereto. The statute, therefore, as now written, is interpreted to mean that all individuals who become unemployed by reason of a labor dispute in active progress at the factory, establishment, or other premises at which they are or were last employed, must be disqualified from receiving unemployment insurance benefits, irrespective of the grade or class of such individuals or their interest in the dispute or their participation in the dispute.

The question then presents itself as to whether a labor dispute was in active progress at the factory, establishment, or premises of Eastern Air Lines, Incorporated. From the findings of fact set forth above it is concluded that a labor dispute was in active progress between Eastern Air Lines, Incorporated, and the flight engineers on June 23, 1962, at the time of the strike or walkout of the flight engi-

neers, and that such labor dispute was still in active progress as of July 12, 1962.

The record shows that when the four-engine piston driven planes and jet planes land or take off at the North Carolina airports, the flight engineers inspect the planes for safety and airworthiness and determine the distribution of gasoline. It is reasonable to conclude and it is so concluded that they perform similar services at all of the facilities of the company throughout its system, and also perform services on the planes while in the air. The service of the flight engineers were necessary to the conduct of the usual business of the company at all three airports in North Carolina, as their services were required on all four-engine piston driven and jet planes landing at all three airports in this State. The services of the flight engineers and other personnel on the four-engine craft and jets are not performed solely at their base or bases of their operations, but throughout the entire system, including the three airports in North Carolina.

The flight engineers failed and refused to perform their services in bringing the planes in and out of the company's facilities in North Carolina as well as all of the other facilities of the company throughout its system. It is concluded that such failure on the part of the flight engineers constituted a strike, both in North Carolina, and elsewhere throughout the system, which resulted in the grounding of four-engine piston driven planes and jet planes, which constituted approximately sixty-five percent of the company's business. As a result of the strike of the flight engineers, the services performed by the North Carolina employees were affected to the extent that their serv-

ices were not needed and the company was forced to cancel all flights and close down its operations at all of the facilities throughout its system. It can only be concluded that the establishment, as contemplated by the statutes, is not and cannot be said to be confined to one facility or to one State, but covers all facilities in the company's system because of the nature of its operations and because the services of one group of employees is dependent upon the services of other groups. It is, therefore, concluded that the phrase "at the factory, establishment, or other premises" as used in the statute, which is applicable to this case, encompasses the entire system of Eastern Air Lines, Incorporated. It, therefore, follows that any of the individuals in the system of Eastern Air Lines, Incorporated, who are unemployed due to the labor dispute must be disqualified from receiving benefits under the Employment Security Law of North Carolina as long as such labor dispute continues in active progress.

It is concluded that all individuals whose names appear on "Exhibit A" hereto attached were unemployed beginning June 24, 1962, through July 12, 1962, and their unemployment was due to a labor dispute in active progress at the factory, establishment or other premises at which they were last employed. Consequently, all of the individuals whose names appear on "Exhibit A" hereto attached must be disqualified from receiving benefits beginning June 24, 1962, through July 12, 1962, and continuing thereafter so long as the labor dispute between Eastern Air Lines, Incorporated, and the flight engineers remains in active progress and their unemployment is caused thereby.

It is further concluded that Pat F. Williams, SS No. 247-60-8141, who filed an initial interstate claim with the Florida State Employment Service office in Tallahassee, Florida; Dianne E. Hunter, SS No. 244-66-2280, who filed an initial interstate claim through the South Carolina State Employment Service office in Conway, South Carolina; Mary Ann Batchelor, SS No. 468-42-0800, who filed an initial interstate claim through the South Carolina State Employment Service office in Columbia, South Carolina, and who worked in temporary employment with Virginia Steel Company of Columbia, from July 2 through July 13, 1962, and Cleon B. Miller, SS No. 246-22-6559, who accepted a temporary job with the McGuire Oil Company of Guilford College, North Carolina, on July 18, 1962, are still attached to Eastern Air Lines, Incorporated, and expect to return to work for such employer when the labor dispute is terminated and, therefore, all of these individuals are in the same category as all other individuals involved in this proceeding, and shall be disqualified from receiving benefits under the Employment Security Law as long as such labor dispute continues in active progress.

It is further concluded that Clyde Reece, SS No. 244-26-1357, and Nancy Hunsinger, SS No. 241-60-3275, covered by R. B. Overton in his Decisions Nos. 543-L and 544-L, respectively, must be disqualified from receiving benefits beginning June 24, 1962, and continuing as long as their unemployment is caused by the labor dispute in active progress between Eastern Air Lines, Incorporated, and the flight engineers. It is further concluded that the unemployment of Clyde Reece, SS No. 244-26-1357, and Nancy Hunsinger, SS No. 241-60-3275, covered by Mr. Overton

in his Decisions Nos. 543-L and 544-L, was caused by the labor dispute in active progress between Eastern Air Lines, Incorporated, and the flight engineers, and they must be disqualified from receiving benefits beginning June 24, 1962, and continuing as long as their unemployment is caused by the labor dispute in active progress between Eastern Air Lines, Incorporated, and the flight engineers. It is further concluded that the unemployment of William M. Pestole, Jr., SS No. 263-38-0643, covered by Mr. Overton in his Decision No. 546-L, was caused by the labor dispute in active progress between Eastern Air Lines, Incorporated, and the flight engineers, and he must be disqualified from receiving benefits beginning July 15, 1962, the effective date of his claim, and continuing as long as his unemployment is caused by the labor dispute in active progress between Eastern Air Lines, Incorporated, and the flight engineers.

In the determination of this case, the Commission considered what it believed to be the intent of the Legislature when it passed Section 96-14 (4) of the General Statutes. The wording of the statute is clear and unambiguous. The unmistakable legislative intent is plainly spelled out in Section 96-14 (4) of the General Statutes. It will be noted from such section that an individual shall be disqualified for any week with respect to which it is found that his total or partial unemployment is caused by a labor dispute in active progress at the factory, establishment, or other premises at which he is or was last employed. It is that portion of Section 96-14 (4) which we are considering in this case as it has been established that the phrase "at the factory, establishment, or other premises," as used in the statute, encompasses

the entire system of Eastern Air Lines, Incorporated, and not just a segment thereof. It should be pointed out, however, that Section 96-14 (4) further provides that if such individual is unemployed because of a labor dispute in active progress at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and *which supplies material and services necessary to the continued and usual operations of the premises at which he is or was last employed*, he is likewise disqualified from receiving benefits so long as the labor dispute is in active progress.

It is obvious from this latter portion of Section 96-14 (4) that it was the intent of the Legislature to disqualify individuals from receiving benefits even if there were no labor dispute in active progress here in North Carolina, but if there was a labor dispute in active progress at another place owned by the employer, which supplies materials and services necessary to the continued and usual operation of the premises at which the individuals in North Carolina were employed. So, even if there had been no labor dispute in active progress at the establishment or other premises of the employer in this State, the claimants in this proceeding would have been disqualified by reason of a labor dispute in active progress at another place owned by the employer.

Decision:

It is now, therefore, ordered, adjudged and decreed that Marian J. Hehs, SS No. 294-32-8207; Edwin D. Meador, SS No. 223-16-0879, Henry Scott McConnell,

SS No. 223-20-4378; Linda Lee Emory, SS No. 244-66-8294; Frances Gail Hartness, SS No. 240-66-5700, and Frances G. Arrowood, SS No. 243-60-1009, and all those individuals whose name appear on "Exhibit A" shall be and the same are disqualified from receiving unemployment insurance benefits beginning June 24, 1962, through July 12, 1962, and continuing as long as the labor dispute between Eastern Air Lines, Incorporated, and the flight engineers remains in active progress and their unemployment is caused thereby.

It is further ordered, adjudged and decreed that the decisions rendered by R. B. Overton, Special Appeals Deputy, No. 543-L in respect to Clyde Reece; No. 544-L in respect to Nancy Hunsinger, and No. 546-L in respect to William M. Pestole, Jr. be and the same are hereby affirmed in all respects. Nancy Hunsinger is disqualified from receiving benefits beginning June 24, 1962; Clyde Reece is disqualified from receiving benefits beginning June 24, 1962, and William Pestole, Jr. is disqualified from receiving benefits beginning July 15, 1962, the effective date of his claim, and all three individuals shall continue to be disqualified from receiving benefits as long as the labor dispute between Eastern Air Lines, Incorporated, and the flight engineers is in active progress and their unemployment is caused thereby.

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

ATTEST:

/s/ R. F. Martin
R. F. Martin,
Secretary

/s/ Henry E. Kendall
Henry E. Kendall,
Chairman.

NOTICE: Any party aggrieved by this decision may appeal to the Superior Court by:

(1) Giving written notice of the appeal to the Employment Security Commission, Box 589, Raleigh, North Carolina, within ten (10) days from the date this decision is mailed; and

(2) If the grounds of the appeal are not stated at the time the notice of appeal is filed, the party must file with the Commission a statement giving the grounds of his appeal within twenty (20) days from the date this decision is mailed.

Appeal Entered:	June 28, 1962
Case Received:	August 8, 1962
Decision Mailed:	August 31, 1962.

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE SUPERIOR COURT
26TH JUDICIAL DISTRICT

In the Matter of: J. K. ABERNATHY SS No. 244-42-7854 Employee, et al and Eastern Air Lines, Incorporated Employer and EMPLOYMENT SECURITY COMMISSION of North Carolina Raleigh, North Carolina	JUDGMENT

This cause, coming on to be heard and being heard before the undersigned Judge Presiding over the October 22, 1962, Special B Civil Term of Mecklenburg County Superior Court upon appeals from a decision of the Employment Security Commission of North Carolina rendered on August 31, 1962, entitled "In The Matter Of: J. K. Abernathy, SS No. 224-42-7854, Employee, et al, and Eastern Air Lines, Incorporated, Employer," Decision No. 3301, pursuant to Notice of Appeal filed on September 4, 1962, in behalf of the employee claimants who are members of the Charlotte Council of the Air Line Pilots Association and Notice of Appeal filed on September 7, 1962, in behalf of all other employee claimants covered by Decision

No. 3301, Formal Statement of Grounds of Appeal having been filed on September 6, 1962, in behalf of the claimants who are members of the Charlotte Council of the Air Line Pilots Association, and Statement of Grounds for Review and Exceptions to the Commission's Decision having been filed on September 15, 1962, in behalf of all other employee claimants covered by Decision No. 3301, all in accordance with the provisions of North Carolina General Statutes Section 96-15, Subparagraph (i);

AND THE COURT having heard argument of counsel for each of the above described categories of claimants and argument of General Counsel for the Employment Security Commission, and having considered the entire record as returned to this Court pursuant to the requirements of the above mentioned Section of the General Statutes, and being otherwise fully advised as to all matters pertinent to said appeal;

AND THE COURT being of the opinion that the Employment Security Commission is in error in finding and concluding that the claimants are disqualified from receiving Employment Security benefits by reason of the provisions of G. S. 96-14(4) upon the facts and circumstances revealed by the evidence in the record, and that its decision is therefore in error and should be set aside; AND THE COURT being of the further opinion that if, upon the record before the Commission, the provisions of G. S. 96-14(4) should be construed as imposing a disqualification upon the appealing claimants who are otherwise eligible for unemployment benefits, then the provisions of G. S. 96-14(4), as so applied under the facts and circumstances of this case established by the record herein, constitute an unlawful discrimination against these

claimants in violation of rights guaranteed to them by the Statutes and Constitution of the United States and by the Constitution of the State of North Carolina.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that Decision No. 3301 rendered by the Employment Security Commission of North Carolina on August 31, 1962, be and the same is hereby reversed and set aside.

THIS THE 25th DAY OF OCTOBER, 1962.

/s/ H. L. Riddle, Jr.
Judge Presiding

To the signing and entry of the foregoing Judgment the Respondent, Employment Security Commission of North Carolina objects and excepts and in open Court gives Notice of Appeal. Further notice is waived. Respondent Commission shall be allowed 45 days in which to serve upon the claimants through their attorneys Statement of Case on Appeal, and said claimants shall have 30 days after such service in which to serve upon the Commission their exceptions or counter statement of case on appeal.

No supersedeas bond is required and IT IS FURTHER ORDERED that the Judgment herein rendered shall be stayed pending perfection of appeal by the Respondent, Employment Security Commission, to the Supreme Court of North Carolina.

THIS THE 25th DAY OF OCTOBER, 1962.

/s/ H. L. Riddle, Jr.
Judge Presiding

JUDGMENT
SUPREME COURT OF NORTH CAROLINA

IN THE MATTER OF:
J. K. ABERNATHY, SS No. 244-42-7854, Employee, et al
EASTERN AIR LINES, INC., Employer
and
EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA, Raleigh, North Carolina

SPRING TERM, 19 63

No. 233 Mecklenburg County

This cause came on to be argued upon the transcript of the record from the Superior Court Mecklenburg *County. Upon consideration whereof, this Court is of opinion that there is* --- *error in the record and proceedings of said Superior Court.*

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable Carlisle W. Higgins *Justice, be certified to the said Superior Court, to the intent that the* JUDGMENT IS REVERSED.

And it is considered and adjudged further, that the Employment Security Commission do pay *the costs of the appeal in this Court incurred, to wit, the sum of* Seven and no 100 *dollars* ($ 7.00), *and execution issue therefor. Certified to Superior Court this* 22nd *day of* April 196 3

A TRUE COPY

Adrian J. Newton
Clerk of the Supreme Court.

By s: Sarah B. Hanner
Sarah B. Hanner, Deputy

IN THE

SUPREME COURT OF NORTH CAROLINA

SPRING TERM, 1963

In the Matter of: J. K. ABERNATHY SS No. 244-42-7854 Employee, et al Eastern Air Lines, Incorporated Employer and EMPLOYMENT SECURITY COMMISSION of North Carolina Raleigh, North Carolina	No. 233 — FROM MECKLENBURG

Appeal by the Employment Security Commission of North Carolina from Riddle, S. J., October, 1962 Special "B" Term, Mecklenburg Superior Court.

This proceeding was instituted before the Employment Security Commission of North Carolina, hereafter called the Commission, by J. K. Abernathy and others, employees of Eastern Air Lines, Inc. (hereafter called Eastern), who filed claims for unemployment insurance benefits during the time they were out of work or furloughed from their jobs as a result of a labor dispute between the flight engineers and Eastern. In due course the Chairman of the Commission ordered the claims referred to R. B. Overton, Special Appeals Deputy, for hearing and disposition. After due notice, the interested parties appeared before Mr.

Overton on July 12, 1962. After concluding the hearing on July 18, 1962, the Appeals Commissioner made detailed findings of fact, stated conclusions of law, and ordered that "all those individuals whose names appear on 'Exhibit A' shall be and the same are disqualified from receiving unemployment insurance benefits beginning June 23, 1962, through July 12, 1962, and continuing as long as the labor dispute between Eastern Air Lines, Inc., and the flight engineers remain in active progress and their unemployment is caused thereby."

The parties adversely affected by the finding, conclusion, and order of the Special Appeals Deputy, including the director, Unemployment Insurance Division, petitioned for and were granted a review by the full Commission. Hearing on review by the Commission began on August 10, 1962. At the conclusion of the hearing the Commission (among other things not deemed essential to the dispute) made these findings:

"1. Eastern Air Lines, Inc., hereinafter referred to as the employer, is a corporation engaged in the business of commercial air transportation, transporting passengers, U. S. mail, and cargo in interstate commerce by means of airplanes serving twenty-six states in the eastern half of the United States and one hundred and twenty cities, and in addition thereto, serving Mexico City, Puerto Rico, Bermuda and Canada.

"2. The employer normally employs seventeen thousand nine hundred and six employees throughout its system with between six hundred and fifty and seven hundred being based in North Carolina

working at or out of the airports and or cities served in this State.

"3. The classification of the employees utilized by the employer consists of various skills and vocations, among which are mechanics and related skills, pilots, stewards, stewardesses, flight engineers, communication workers, dispatchers, and various clerical workers, and others, including some non-union personnel.

"4. The employees of Eastern Air Lines, Inc. are represented through its system by the following unions or associations according to their skills and vocations: (1) International Association of Machinists; (2) Airline Pilots Association; (3) Airline Stewards and Stewardesses Association; (4) Flight Engineers International Association; (5) Communication Workers of America Union; and (6) Airline Dispatchers Association. Such unions or associations have been duly certified under the Federal Statutes as the bargaining agents for their members and all other personnel performing similar or related duties, and such bargaining is on a system-wide basis.

"5. In its system the employer employs five hundred and seventy-five flight engineers whose services are utilized on four-engine aircraft throughout its system. Some of such four-engine aircraft land and take off with passengers and cargo at all airports in the system located in North Carolina; namely, Charlotte, Raleigh-Durham and Greensboro-High Point, taking on passengers and cargo at each airport as the necessity arises. Jet planes belonging to the employer also land and take off

from the airport in Charlotte taking passengers and cargo to and from that airport as the necessity arises. Flight engineers are employed and used on all four-engine and jet aircraft landing and taking off in North Carolina. None of the flight engineers are based in North Carolina although they fly in and out of the various airports on schedules of four-motored piston driven planes and all jet planes serving North Carolina. The flight engineers perform services at each of the company's facilities in North Carolina and elsewhere throughout its entire system. When the four-engine piston driven planes and jet planes land at the North Carolina airports, the flight engineers inspect the planes for safety airworthiness and determine the distribution of gasoline.

"6. Approximately thirty-five per cent of the planes used by the employer in its system are two-engine aircraft and on all the two-engine aircraft the services of flight engineers are not used. Approximately sixty-five per cent of the planes used by the employer in its system consist of four-engine piston planes and jets, all of which utilize the services of flight engineers.

"7. On June 23, 1962, the five hundred and seventy-five flight engineers went on strike and refused to carry out their work assignments. This strike and refusal to work was in protest of the failure of the employer and the bargaining agent representing the flight engineers to reach an agreement as to the qualifications of the flight engineers, there being a difference of opinion between such parties as to whether the flight engineers should also be qualified as pilots. Beginning on June 23, 1962,

and continuing through the date of the hearing by the Special Appeals Deputy on July 12, 1962, the flight engineers failed and refused to perform their services in bringing planes in and out of the facilities of the employer in North Carolina, and elsewhere.

"8. In consequence of the strike of the flight engineers, the employer cancelled all flights and furloughed several thousand employees, including its employees in North Carolina, a list of which is hereto attached and marked 'Exhibit A.' Those individuals whose names appear on 'Exhibit A' hereto attached were unemployed beginning June 24, 1962, through July 12, 1962, the date of the hearing before the Special Appeals Deputy, and their unemployment is due to the dispute or controversy in existence between the flight engineers and the employer; that the controversy between the flight engineers and the employer was still in existence as of the date of the hearing before the Special Appeals Deputy on July 12, 1962. * * *"

"From the findings of fact . . . it is concluded that a labor dispute was in active progress between Eastern Air Lines, Inc., and the flight engineers on June 23, 1962, at the time of the strike or walkout of the flight engineers, and that such labor dispute was still in active progress as of July 12, 1962." The Commission, by Decision No. 3301, denied the claims upon the ground that G. S. 96-14 (4) disqualified the laid-off employees for insurance benefits. Upon appeal and after hearing, the Superior Court entered the following order:

"AND THE COURT being of the opinion that the Employment Security Commission is in error in finding and concluding that the claimants are disqualified from receiving Employment Security benefits by reason of the provisions of G. S. 96-14 (4) upon the facts and circumstances revealed by the evidence in the record, and that its decision is therefore in error and should be set aside; AND THE COURT being of the further opinion that if, upon the record before the Commission, the provisions of G. S. 96-14 (4) should be construed as imposing a disqualification upon the appealing claimants who are otherwise eligible for unemployment benefits, then the provisions of G. S. 96-14 (4), as so applied under the facts and circumstances of this case established by the record herein, constitute an unlawful discrimination against these claimants in violation of rights guaranteed to them by the Statutes and Constitution of the United States and by the Constitution of the State of North Carolina.

"NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that Decision No. 3301 rendered by the Employment Security Commission of North Carolina on August 31, 1962, be and the same is hereby reversed and set aside."

The Employment Security Commission of North Carolina appealed.

W. D. Holoman, R. B. Billings, D. G. Ball, for the Employment Security Commission of North Carolina, appellant

Gambrell, Harlan, Russell, Moye & Richardson,

By: E. Smythe Gambrell, William G. Bell, Jr., Harold N. Hill, Jr., Sidney F. Wheeler, for Eastern Air Lines, Inc., appellee

Blakeney, Alexander & Machen,

By: Bailey Patrick, Jr., for North Carolina Employees of Eastern Air Lines, Inc., except the 123 Captains and Air Line Pilots based in North Carolina, appellees

Warren C. Stack,

By: James L. Cole, for Charlotte Council, Air Line Pilots Association, Eastern Air Lines, Inc., appellees

Joyner & Howison,

By: William T. Joyner, for Harriet Cotton Mills and Henderson Cotton Mills, *amicus curiae*

HIGGINS, J.

Here for review is the Superior Court judgment that the Employment Security Commission committed error (1) "In finding and concluding that claimants are disqualified from receiving Employment Security benefits by reason of the provisions of G. S. 96-14 (4) upon the facts and circumstances revealed by the evidence in the record, . . ." and (2) If the 1961 amendment should be construed as a disqualification, then it constitutes an unlawful discrimination in violation of the State and Federal Constitution. From this judgment the Commission appealed. The right to appeal is given by G. S. 96-15.

In their appeal to the Superior Court from the Commission, the claimants, by exceptions, challenged the sufficiency of the evidence to support the Commission's findings of fact. The trial court did not pass on these exceptions. It seems from the wording of the judgment the court did not attempt to set aside any of the findings. However, to eliminate any uncertainty in this respect, we have reviewed all the evidence and conclude that it furnishes support for the Commission's findings of fact. Findings, supported by competent evidence, are conclusive on appeal. Employment Security Comm. v. Freight Lines, 248 N. C. 496, 103 SE 2d 829; In Re Stutts, 245 N. C. 405, 95 SE 2d 919; Employment Security Commission v. Simpson, 238 N. C. 296, 77 SE 2d 718; G. S. 96-15 (i). The pivotal question, therefore, is whether the claimants are disqualified by the 1961 amendment to G. S. 96-14.

In the judicial process of construing legislation the courts take a long look at the purposes to be accomplished. The Congress, using the English Act of 1911 as a pattern, passed the Federal Social Security Act on August 14, 1935. One of its major purposes was to give aid, to be administered through State agencies, to those out of work through no fault of their own. To be eligible for Federal contributions, a State agency was required to levy an unemployment compensation tax on employers to supplement the Federal contribution. In its extra session in 1936 the North Carolina General Assembly enacted its Unemployment Compensation Law to take advantage of the Federal grant. One of its major purposes was to provide a fund by systematic accumulations during periods of employment to be retained and used for the benefit of persons furloughed from their jobs through no fault of their own.

Both the State and Federal Acts were passed at a time when the country appeared to be in the initial stages of recovery from a disastrous depression. The lessons learned in the early thirties were both fresh and poignant. The intent was to accumulate, by Federal grant and by an employer's tax, an insurance fund which in a time of need would tide over workers temporarily laid off because work was not available. Employers in all probability did not contemplate their tax money would be used to encourage any work stoppage resulting from a labor dispute. In discussing this background, the Nebraska Law Review, Vol. 37, No. 4, of June, 1958, contained the following:

> "(1) It was not considered wise to permit the fund to be used to finance or subsidize workers engaged in trade disputes, because it was feared that if benefits were available to all workers unemployed as a result of a trade dispute, they would be encouraged to suspend work in furtherance of their position in the dispute, thereby imposing an unfair burden upon the employer, and working injury upon the national economy and upon the public at large; (2) because there had been no previous experience, it was feared that payment of benefits when unemployment was due to a labor dispute might cause a severe drain upon the funds available, thereby defeating the primary purpose for which the fund was created — the payment of benefits when unemployment was due to 'fluctuations in trade.' "

It is doubtful whether in 1935-36 legislators — Federal or State — had in contemplation a time when a few specialists out on strike could force a shutdown

of a flourishing business employing nearly 18,000 persons in 26 States, the District of Columbia, Canada, Mexico and Puerto Rico. Neither was it contemplated that the insurance fund could be depleted by workers who were not actually participating in the strike but who were out of work because of it. The depletion of the insurance fund required further employer taxes.

As the years passed the original objects lost some of their clear outlines. Rules and regulations were relaxed permitting depletion of the fund for purposes not in contemplation when provision was made for it. However, in North Carolina the amendment of 1961 reversed the trend. Prior to July 1, 1961, G. S. 96-14 provided:

"An individual shall be disqualified for benefits . . . (4) For any week with respect to which the Commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that — (a) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (b) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: Provided, for the purpose of this subdivision (4), that if in any case separate branches of work which

are commonly conducted as separate business in separate premises are conducted in separate departments of the same premises, each such department shall be deemed to be a separate factory, establishment, or other premises."

Effective July 1, 1961, the General Assembly, by Chapter 454, Session Laws of 1961, struck out all of Section 4 above quoted and substituted the following:

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is caused by a labor dispute in active progress on or after July 1, 1961, at the factory, establishment, or other premises at which he is or was last employed or caused after such date by a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the factory, establishment, or other premises at which he is or was last employed and which supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. Provided, that an individual disqualified under the provisions of this subdivision shall continue to be disqualified thereunder after the labor dispute has ceased to be in active progress for such period of time as is reasonably necessary and required to physically resume operations in the method of operating in use at the plant, factory, or establishment of the employing unit."

The effect of the amendment was to eliminate from Section 4 the means therein provided by which an

employee might escape disqualification. Likewise, the amendment removed the provision that separate branches of work commonly conducted in separate premises or in separate departments of the same premises shall be deemed to be separate factories, establishments, or other premises. Instead the amendment extended the disqualification if the unemployment is caused by labor dispute in progress at the factory at which the worker was employed or at another place, either within or without this State, if owned or operated by the same employing unit and which supplies materials or services necessary to continue the operation where he was employed.

In this case planes carrying practically two-thirds of Eastern Air Lines' transportation business were grounded because flight engineers used to operate or to service the planes. Only two-motor craft could operate without the flight engineers. These small planes were engaged in feeder operations on short flights. The heart of Eastern's business was the four-motor and jet planes. As a result of the labor dispute between Eastern and its flight engineers, Eastern was forced to shut down its operations and to close its terminals in North Carolina where claimants had been at work. So far as the results are concerned, it was immaterial where the flight engineers lived, or where their flights originated. When they left the planes, transportation stopped. Eastern's employees at the terminals in North Carolina were furloughed because Eastern was forced out of business by the strike.

Without force is the argument that flight engineers were not based in North Carolina and hence the terminals in this State constituted other plants, factories,

establishments, and premises of the employing unit. It must be remembered that new Section 4, in effect at the time the work stopped, extends the disqualification to workers at a factory, establishment, or other premise which supplies necessary materials or services to the plant where the claimants were last employed. The striking flight engineers refused to help man the planes to or from the terminals in North Carolina. This failure to perform this service caused the shutdown at the terminals where claimants were employed.

The many cases cited by the Air Line Pilots Association are not in point. Their brief states: "Since no statute has been found in any jurisdiction written in the discriminatory language of G. S. 96-14 (4), as amended, all cases reviewed reveal situations arising under Unemployment Security Acts which are similar to the North Carolina Unemployment Security Act prior to 1961." The Commission was bound by the disqualifying terms of the 1961 amendment. Its duty was to protect the integrity of the insurance fund and to be neutral between the management and the workers.

The disqualification resulted from the labor dispute between the flight engineers and Eastern. All flight engineers in the system were out on strike. Their duties were so integrated into Eastern's entire operation that the big planes were grounded because of their refusal to work. Cameron v. DeBoard, 230 Or. 411, 370 P. 2d 709; Depaoli v. Ernst, 73 Nev. 79, 309 P. 2d 363; Adamski v. State, Bureau of Unemployment Comp., 108 Ohio App. 198, 161 NE 2d 907; Spielmann v. Industrial Commission, 236 Wis. 240,

295 NW 1; Ford Motor Co. v. Abercrombie, 207 Ga. 464, 62 SE 209; Park v. Appeal Board of Michigan Employ. Sec. Com'n., 355 Mich. 103, 94 NW 2d 407; Magner v. Kinney, 141 Neb. 122, 2 NW 2d 689.

The cases here discussed, and many more therein cited, would seem sufficient to convince all but the highly skeptical that in passing the 1961 amendment the North Carolina General Assembly acted within its constitutional powers. "When the subject lies within the police power of the State, debatable questions as to reasonableness are not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome." Sproles v. Binford, 286 U. S. 374, 52 S. Ct. 581, 76 L. ed. 1167; In re Stevenson, 237 N. C. 528, 75 SE 2d 520; Employment Security Com. v. Jarrell, 231 N. C. 381, 57 SE 2d 403; In re Steelman, 219 N. C. 306, 13 SE 2d 544. "Legislative bodies may distinguish, select, and classify objects of legislation. . . . They may prescribe different regulations for different classes. . . . The one requirement is that the ordinance must affect all persons similarly situated or engaged in the same business without discrimination." State v. Trantham, 230 N. C. 641, 55 SE 2d 198; see also, Bickett v. Tax Commission, 177 N. C. 433, 99 SE 415; Magoin v. Bank, 170 U. S. 283, 18 S. Ct. 594, 42 L. ed. 1037; City of Springfield v. Smith, 322 Mo. 1129, 19 SW 2d 1; Unemployment Compensation Com. v. Willis, 219 N. C. 709, 15 SE 2d 4; Steward Machine Co. v. Davis, 301 U. S. 548, 57 S. Ct. 883, 81 L. ed. 1279. The unemployment insurance acts of the states contain certain worker disqualifications, among them, (1) discharge for misconduct, (2) refusal to accept other suitable

employment, (3) participation in a strike. The power of the legislature to provide these disqualifications is not challenged. The further disqualification contained in the 1961 amendment involves a question of degree and not of principle.

For the reasons here stated, we hold the judgment of the Superior Court of Mecklenburg County was erroneous and must be

Reversed.

Rodman, J., took no part in the consideration and decision of this case.

C. O. No. 4359

COMMONWEALTH OF KENTUCKY
KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION
FRANKFORT, KENTUCKY

IN THE MATTER OF:

The Claims for Benefits by TEDDIE LITTLE (SS No. 406 12 4756, A. D. No. 62-2152) and 104 Other Similarly Situated Employees of Eastern Air Lines, Inc.

ORDER

* * * * *

This appeal poses a question of law touching on an important aspect in the administration of the Kentucky Unemployment Insurance Act. It requires a determination of the meaning of the work "establishment" as used in KRS 341.360 (1). In so far as pertinent that provision recites, inter alia, that a worker may not serve a waiting period or be paid benefits for any week of unemployment with respect to which a strike or other bona fide labor dispute which caused him to leave or lose his employment is in active progress in the *establishment* in which he is or was employed. The 105 claimants were employees of Eastern Air Lines, Inc. and were declared ineligible to receive benefits by an adjusted determination and a referee decision for the period commencing June 23 until they returned to their respective jobs before or after the resumption of normal operations by Eastern, which occurred on September 13, 1962.

There have been no exceptions taken to the exhaustive finding of facts made by the referee and ably set out in his decision. For the details of the facts, the referee's findings are hereby adopted and by reference incorporated herein. For clarity of this decision we will merely point out the more salient facts which will contain some that were not specifically mentioned by the referee.

Eastern Air Lines, Inc. maintains an air transportation system carrying passengers, mail and cargo between 115 cities located in twenty-seven (27) states of the United States and has flights to Puerto Rico, Bermuda, Canada and Mexico. Its chief executive offices are in New York City and its main base of operations is Miami, Florida. It has a normal employment complement of approximately 17,900 workers, of whom 175 are employed in Kentucky at the airports located at Lexington-Frankfort, Greater Cincinnati, Louisville, Bowling Green and Owensboro. It also maintains a downtown ticket office in Louisville.

Eastern employs throughout its operation, in varying numbers, mechanics and ramp men; radio and teletype operators; pilots; flight engineers; stewards and stewardesses; and dispatchers. Each of the above is represented by a union or association. Also employed are agents, sales personnel, customer service personnel, clerks, porters, secretaries, stenographers, and station managers who are not affiliated with any union or association.

The flight crew, consisting of pilots, a flight engineer and flight attendants (stewards and stewardesses), are based in various major cities served by the air lines, and are under the supervision and control

of a supervisor located in the city of their base. There are no flight crew members based in Kentucky.

All of the employees of Eastern who work in any one of the cities in Kentucky serviced by the air lines are hired, paid, supervised and discharged by local Kentucky management. The supervisory personnel based in Kentucky has no occupational contact or authority over the flight engineers while the engineers are on the ground in Kentucky.

For approximately eighteen (18) months a controversy existed concerning the number of personnel to occupy the cockpit on flight of jet planes. The jet crew formerly consisted of three (3) pilots and one (1) person with flight engineer qualifications. A movement was made with the approval of the appropriate governmental agencies to reduce the cockpit crew to three (3) persons, two (2) of whom would be qualified pilots and the third a qualified flight engineer.

The flight engineers, who theretofore had been represented by the Flight Engineers International Association as its bargaining agent with Eastern, demanded that said Association be given the right, by a separate contract, to represent the third man in the cockpit, and upon reaching an impasse the flight engineers' union called a strike effective at 1:00 p.m., Eastern Standard Time, June 23, 1962. Picket lines were established by the strikers at the terminals and ticket offices in many of the major cities serviced by the company. There were no pickets or other manifestations of a strike in the areas of Kentucky which Eastern serves, nor was there any controversy between workers employed in Kentucky or their union and Eastern.

Following the action of the flight engineers, because of insufficient qualified personnel to maintain all flights and public apprehension which brought about reduced calls for reservations, Eastern cancelled all of its flights and furloughed many of its employees, including the 105 claimants concerned in this matter.

It is contended that the decision of the referee was in error in holding the claimants disqualified under the provisions of KRS 341.360 (1) because there was no strike or labor dispute in existence in the "establishment" maintained by Eastern in Kentucky which caused the claimants to leave or lose their employment.

The Unemployment Insurance Commission and the Court of Appeals of Kentucky have been previously called on to apply this same section of the law. In each of the two (2) cases that went to the Court of Appeals the fact situation was different.

In 1958 the Commission had before it another controversy involving this same employer, but the facts were not the same as now. Then the mechanics employed in Kentucky joined the other striking group. In the case at bar neither the mechanics nor any other Kentucky group participated in, joined or helped finance the strike.

Numerous courts throughout the country have had before them this identical (or practically identical) question. Various tests have been adopted and applied to determine the meaning and application of "establishment." Often when a court has been called on the second time to resolve the meaning of the word under

facts which are not identical, it has abandoned its former approach or test and made another finding.

In 1955 the Court of Appeals decided the case of Snook v. International Harvester Company, Ky. 276 S.W. 2d 658. Therein the controversy was whether or not the two (2) divisions of the International Harvester Company located at the same geographic site with a common boundary and common employment practices with one overall plant manager constituted one (1) or two (2) establishments. The Court applied the "functional integrality, general unity and physical proximity tests," and found that the two (2) divisions were functionally integrated; that there was a general unity both in the operation of the plant and in the nature of employment; and that their physical proximity was such as to constitute a single unit; and, therefore, it was one (1) establishment.

In 1951 in the case of Ford Motor Company v. Kentucky Unemployment Compensation Commission, Ky. 343 S.W. 2d 657, the Court of Appeals followed the Minnesota case of Nordling v. Ford Motor Company, Minn. 42 N.W. 2d 576 and adopted the following language of the Minnesota opinion:

> "We believe that the solution of the problem lies in determining from all the facts available whether the unit under consideration is a separate establishment from the standpoint of employment and not whether it is a single enterprise from the standpoint of management or for the more efficient production of goods."

The term "establishment" means the place where the employee was last employed and does not include

all of the plants of the employer situated in many states and foreign countries. The solution of the problem is to determine whether two (2) plants are separate establishments from the standpoint of employment, and not whether they are to be regarded as separate enterprises from the standpoint of management or for more efficient production of manufactured products. (Machcinski v. Ford Motor Company, 102 N.Y.S. 2d 258.

The New York Unemployment Compensation Law is quite similar in its wording to the provision of the Kentucky Law under consideration; and it provides that a claimant is not entitled to benefits if he lost his employment because of an "industrial controversy in the establishment in which he was employed."

The word "establishment" is not refined in its statutory usage by contexual words. It seems certain, however, the Legislature did not mean by "establishment" the whole compass of a large employer's business institution where it operates in differently localized components. The word "establishment" has strong local connotations. In common use, it often denotes a store or mercantile place of business. An industry with many localized units may have many "establishments" within the statutory language as we read it. An industrial controversy in one localized place affecting employment in another localized place in such an industry is not in the same establishment. (Machcinski v. Ford Motor Company, supra.)

The referee followed the 1958 decision of the Unemployment Insurance Commission notwithstanding the factual difference in the two (2) cases, and in his opinion he adopted the broad interpretation of the

word "establishment." In the case of Ferrara v. Catherwood, 202 N.Y.S. 2d 869, we find the following:

> "The industrial Commissioner argues that the phrase 'containing the word "establishment" should be given a definition of sufficient breadth to include employees whose continuance in his job, has become useless, or economically wasteful, while the strike lasts and "because of" it.' "

The Court continued:

> "To adopt the broad interpretation advanced by the Commissioner would obliterate the carefully delineated distinction which the statute seeks to draw between the phrase 'because of a strike.' Under his construction, one or the other of the two tests for a suspension would become superfluous. Manifestly, therefore, the statutory language itself requires rejection of this interpretation."

The Kentucky Legislature, as practically all other state legislatures, did not give a definition of the word "establishment," but it used the word in two (2) separate sections of the law. Once in the section now being discussed, KRS 341.360 (1) and again in KRS 341.060 (2) which is as follows:

> "All workers performing services within this state for any employing unit which maintains *two or more separate establishments* within this state shall be deemed to be employed by a single employing unit for all purposes of this chapter."

It becomes apparent that the legislative intent of the word "establishment" is not synonymous with the word industry or business enterprise. We believe that the last quoted section of the law is sufficient author-

ity for holding that not only an employer may have more than one "establishment" within this state but certainly components of an employer outside the boundaries of Kentucky may be separate "establishments" from those within.

We have carefully reviewed numerous cases which deal with this subject, and it is obvious that the majority rule is to the effect that in defining "establishment" we look to the employment and to the geographical situs. Certainly the more weighty authority of the more highly regarded courts is to that effect. Under these conditions, and the facts in this case, which adequately show that the Kentucky employees of Eastern were employed and supervised by management in Kentucky; that they were located for working purposes in Kentucky; that they were hired and fired in Kentucky; that none of the employees had any interest whatsoever in the strike; and that none of the striking personnel of Eastern was employed in Kentucky; we conclude that the referee erred in holding that the Kentucky workers were out of employment because of a strike in the establishment where they were last employed.

WHEREFORE, the Commission, having reviewed the record and being advised, sets aside the referee decision and holds that the 105 Kentucky employees of Eastern Air Lines, who became unemployed and filed claims for benefits for the period subsequent to June 23, 1962, because of a strike by the flight engineers in the establishments maintained by Eastern in areas outside Kentucky, were not unemployed because of a strike in progress in the Kentucky establishment where they were employed; and that if they were otherwise eligible, benefits should be paid.

A list of the claimant involved herein and affected hereby is attached hereto and made a part hereof.

/s/ Earle V. Powell
Earle V. Powell
Commissioner of Economic Security

s/ Thos. E. Phipps
Thos. E. Phipps
Associate Commissioner

/s/ R. E. James
R. E. James
Associate Commissioner

Name	*S.S. No.*	*Name*	*S.S. No.*
Wm. H. McDowell	400 38 0631	H. Alsip	286 20 4300
L. C. Beckman	306 38 6030	M. M. Bennett	405 20 3937
T. Brangers	403 56 7619	H. H. Bush	403 44 9818
J. W. Cain	306 26 2001	H. W. Carter	405 48 4631
J. H. Clark	407 50 4790	D. R. Colbert	305 32 4975
A. R. Conner	308 20 1070	R. J. Cook	262 16 5951
R. D. Deister	510 12 9211	D. L. Duncan	406 22 6607
W. G. Geiger	404 46 2044	A. Gilbert	405 40 1547
D. C. Gray	407 34 2305	C. Hagan	407 46 8093
W. J. Handlos	199 14 7553	J. H. Hayes	403 34 9079
W. E. Hensley	407 20 6567	S. Hogan	405 38 4616
T. P. Humphrey	547 36 0924	W. B. Hunt	317 30 4701
G. R. Hunter	251 32 8840	M. M. Ice	407 16 3551
K. C. Ikerd	305 42 0661	J. R. Jackson	407 50 3092
D. E. Jenkins	370 12 9164	N. W. Karl	402 22 8718
E. M. Kimbrell	406 28 3071	B. H. LaCroix	434 48 1230
E. T. McCrocklin	401 36 3642	W. H. McDowell	400 38 0631
J. Y. Maskalick	406 52 2899	J. N. Mattingly	405 26 3826
D. A. Miller	403 44 3524	E. J. Miller	400 48 2952
M. K. Rains	400 42 9790	C. E. Ratliff	400 36 6515
W. B. Ratterman	406 42 4873	J. W. Rhudy	405 36 0221
J. H. Riggs	402 38 3401	J. M. Rubey	313 36 0956
E. D. Sanders	400 40 6129	D. Scheibel	403 54 6929
E. J. Schneider	400 03 8113	S. A. Schnellenberger	400 40 7233
R. Schott	406 42 4911	C. F. Schwartz	577 46 3791
W. H. Scott	405 38 3691	W. D. Seigle	401 28 6659
E. Shaw	402 36 6308	M. W. Sheeley	406 46 7480
F. E. Smith	310 16 5188	J. R. Smith	325 18 7350
J. W. Soukup	045 12 9219	G. V. Stambaugh	403 36 4034

Name	*S.S. No.*	*Name*	*S.S. No.*
K. L. Stoner	205 12 1537	F. J. Thompson	401 34 4970
J. J. Thompson	403 24 6484	L. C. Tilley	246 32 8591
S. R. Tomes	403 50 1030	G. D. Triplett	403 46 6774
C. S. Turner	404 56 2912	L. W. Watkins	407 42 7888
J. K. Wesley	406 24 7297	R. A. Wheat	400 38 0577
W. F. Whitehouse	405 38 0075	C. H. Williams	401 36 1883
R. D. Williams, Jr.	400 46 3230	B. J. Wilson	406 52 4172
J. G. Wilson	405 42 8418	A. Woosley	402 20 5665
T. A. Blank	404 50 9503	K. E. Cotcamp	406 50 0170
J. R. Fay	407 44 2564	T. C. Hundemer	272 32 9655
W. M. McKenna	400 58 9048	R. L. Million	402 44 7646
K. L. Richmond	278 28 8940	R. L. Dossey	522 16 5040
N. E. Minyard	401 46 2335	A. R. Proffitt	400 26 2268
C. A. Preston	402 42 7813	C. E. Buxton	352 01 3699
R. B. Cole	405 40 6686	H. M. Cunningham	401 40 2396
J. L. Elliott	406 36 9733	D. A. Henry	198 22 9532
B. T. Rabe	404 36 9533	H. H. Ramsey	402 40 3367
R. E. Andre	407 34 8532	E. A. Bright	411 10 8951
J. M. Hardesty	401 40 4866	G. L. Gray	305 32 9296
G. A. Burnett	247 40 5577	D. A. Holt	406 54 2814
J. D. Jakobsen	502 36 8425	H. E. Knauss	308 44 2696
M. McDonald	264 50 8754	I. E. Miller	304 44 2062
A. L. Noggle	225 40 9219	W. M. Norris	304 38 4131

I, Patty C. West, notary public in and for the State of Kentucky at large do hereby certify that this document containing ten (10) typewritten pages is a true and correct copy of Order No. 4359 of the Kentucky Unemployment Insurance Commission as it appears in said Commission's official Order Book No. 13 beginning at page 92 and carrying the date of entry as November 1, 1962.

/s/ Patty C. West
Patty C. West
Notary Public
State-at-Large

My Commission Expires Feb. 7, 1965

The above Order was entered and signed on the Kentucky Unemployment Insurance Commission Order Book No. 13, at page 92 on the first day of November, 1962.